IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3119 of 2003

1.Hiren Bharani, an Adult Indian Inhabitant, Proprietor of Petitioner No.2 and C.A. to Smt.P.K.Pandoth, Petitioner No.3 residing at 201, Geraldine, 487, 13th Road, Chembur, Mumbai-400 071. ..Petitioner
2.M/s.Mijit Builders, A proprietary Firm having its office at 201, Geraldine, 487 13th Road, Chembur, Mumbai-400 071.
3.Smt. Pankajam Karunakaran Kandoth, Owner, an adult Indian Inhabitant, residing at 2nd Floor, 11th Road, Chembur, Mumbai-400 071.

Versus

1.State of Maharashtra through Ministry of Revenue and Forest, Mantralaya, Mumbai
2.The Collector (M.S.D.) having office at Administrative Building, 10th Floor, Govnt. Colony, Bandra (East), Mumbai-400 051.
3.The Municipal Corporation of Greater Mumbai, having their office at Mahapalika Building, Mahapalika Marg, Fort, Mumbai-400 001.
4.The Assistant Engineer, (Building Proposals) (Eastern Suburbs, having his office at office of the Deputy Chief Engineer, (B.P.) E.S. Municipal Transport Garage Building, 4th Floor, Pant Nagar, Ghatkopar (East),Mumbai-400 075. ..Respondents

Mr. Sanjay Kotak i/b. Puranand & Co., for the Petitioners.
Mr. K.R. Belosey, AGP for Respondent Nos. 1 and 2.
Mrs. P.A. Purandhare for Respondent Nos. 3 and 4.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE : 5TH OCTOBER 2006

ORAL JUDGMENT(PER F.I. REBELLO, J.)

. The petitioners claim as owners of a piece of land comprised of Old Plot No.537 admeasuring 534.07 sq. meters bearing C.T.S. No.1457 which is referred to as the Plot together with the building standing thereon. It may be mentioned that in the group of cases pending before us, lands have been developed by putting up buildings and what is now sought to be done is re-development. The facts in this case are being considered as the issue of law in this petition and the other petitions on board are same or similar. The petitioners case is that in 1940s the Collector of Bombay Suburban District granted building sites in the Suburban Town Planning Schemes to people wanting to build their houses, with rights to hold the said lands in perpetuity subject to the payment of annual N.A. Tax. According to the petitioners these are "Grants" given under the provisions of the Bombay Land Revenue Code 1921. The petition refers to various transactions in respect of the plot and the steps taken by the Government. The immediate cause of the petition is the letter dated 21st October, 2001 addressed by the Section Officer, Revenue and Forests Department of Respondent No.1 addressed to the Commissioner of Respondent No.3. By that letter/Circular the Municipal Commissioner has been called upon to follow the instructions given under Order dated 15th March, 1999 of the Urban Development Department. It is further set out that before the permission granting Development permission for the land and the permission granting building completion certificate a No Objection Certification should be

obtained from the concerned Collector by the person applying for development and in the absence of that no permission should be granted to commence construction or grant development permission or grant building completion certificate. It is this letter/circular which is the subject matter of the present petition.

2. On behalf of the Respondent State Shri Madhukar Govind Paste, Additional Chitnis, having his office at the office of the Collector, Mumbai Suburban District has filed an affidavit. It is set out that the plot has been allotted under Rule 43 of the Bombay Land Revenue Code 1921 as an occupant on payment of concessional land revenue. All such occupants fall in the category of Occupation "Class-II" as laid down under Section 29 of the Maharashtra Land Revenue Code, 1966. Clause 5 of the Form provides that all Rules are applicable to the occupants. In these circumstances it is pointed out that the provisions of the Land Revenue Code 1966 are applicable. It is further set out that though dual control was abolished since the Bombay Municipal Corporation extended its limit from Bombay to Bombay Suburban after introduction of Bombay Municipal (Extension of Limits) Act 1950, it is wrong to presume that ownership of the land belonging to the Government is divested or absolved. The right of improvement, non-agricultural permission and levy of non-agricultural assessment is retained with the Collector and as such the State continues to be the owner of all the lands and its holders are all occupants.

3. The question before us is whether it was open to the Section Officer and/or State Government to issue the letter/Circular which is the subject matter of the present petition. The learned A.G.P. has been unable to point out any such power in the Respondent No.1 to direct an authority created under the provisions of the Mumbai Municipal Corporation Act to be subject to such directions. The Government could have issued such direction in the event there was power to issue such a direction and after following due procedure. The letter issued by Section Officer really cannot be said to be a letter in the exercise of the executive powers of the State under Article 162 of the Constitution of India. Even assuming it to be so it must be traceable to some provisions under the provisions of the Mumbai Municipal Corporation of Act. Nothing has been pointed out to us that such a power exists in the State Government to direct the Municipal Commissioner not to grant development permission without obtaining NOC from the Collector. In our opinion, therefore, a Circular directing that NOC should be first obtained from the concerned Collector is really without authority of law. The Circular at the highest can be read to be traceable to the order dated 15th March, 1999 which has been issued under Section 154 of the M.R.T.P. Act. Though the order dated 15th March, 1999, is not challenged in this petition, it has been so challenged in other companion petitions and even otherwise its legality will have to be considered in view of the letter/circular dated 21st

October, 2001.

4. We may now refer to the order dated 15th March, 1999 which we have adverted to earlier. It is purported to be a direction under Section 154 of the Maharashtra Regional & Town Planning Act, 1966. Section 154 reads as under:-

> "154. Control by State Government. (1) Every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.
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> (2) If in, or his connection with, the exercise of its powers and discharge of its functions by the Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority, and the State Government, the decision of the State Government on such dispute shall be final."

4. By the Circularof 21st October, 2001, Government has directed that while granting development permission and contingency permission of the land sanctioned by the Government, it shall be ensured by the concerned Revenue Officer that the terms and conditions of the Agreement are scrupulously followed. It is further set out that it

is necessary for the Planning Authority to ascertain as to whether the term of the lease has expired or otherwise. Moreover, in any circumstances in the case where period of lease has expired, building permission should not be given in the absence of prior permission of the concerned Revenue Officer. A perusal of Section 154 of the M.R.T.P. Act would make it clear that these are instructions to be issued by the State Government for the efficient administration of the Act. Efficient administration of the Act would contemplate if there be difficulties in giving effect to the provisions of the Act, then those difficulties can be removed by exercise of power under Section 154 of the Act. It will also include direction to the Planning Authorities to amend the D.C. Regulations in conformity with the directions. The direction cannot be contrary to the D.C. Regulations or add to or delete any part of the D.C. Regulations. That can only be done by following the procedure. Secondly, the directions have to for the purpose of planning, which is the main object of the Act. Direction cannot over ride the subordinate legislation already made. Section 154 cannot be held to include a power to issue direction to a planning authority to decide the title of the lands nor does it mean that the power under Section 154 can be exercised to restrain and/or limit the power of the Planning Authority from exercising its powers. The Development plan and the D.C. Regulations which are part of the Development Plan have to be in conformity with the provisions of Section 22 of the M.R.T.P. Act. The order, therefore, is clearly beyond

the scope of power conferred under Section 154 to the extent that it requires a N.O.C. from the Collector and to that extent in so far as granting N.O.C. for development of lands given under the Bombay Land Revenue Code 1921 the order would be illegal null and void. We make it clear that it does not mean that the Planning Authority would not ascertain documents to examine from the documents produced whether the applicant has title to develop the land in terms of the D.C. Regulations or any other law in force. That is a power however, to be exercised by it.

5. Considering, however, the contention raised on behalf of the respondent No.1 State that the issue as to whether the title has divested from them and has gone to the occupants or remained in the State is one which has to be examined under the appropriate legislation, for that purpose at the highest we can read down the Circular/letter of 21st October,2001 to mean that if an application is made for development to respondent No.3, the Respondent No.3 will communicate to the respondent No.1 the fact that development permission is being sought. We make it clear that these are restricted to those occupants who seek to develop lands given under the provisions of the Land Revenue Code or other enactment. On such an application being received for development, the respondent No.3 within four weeks shall intimate the same to respondent No.1. It will thereafter be open to the respondent No.1 to take whatever steps in law they that are entitled to. Needless to say that such steps

should be taken only after hearing the occupants and/or their attorney as the case may be. We further make it clear that it does not mean that Respondent No.3 will not process the application till such decision. Respondent No.3 is bound to proceed with consideration of the development permission. Permission granted will be subject to the decision that may be taken under the appropriate legislation.

5. During the pendency of the petitions, in most of the petitions, the petitioners were called upon to file an undertaking that in the event the petitioners raise construction on the property in question such construction shall be raised in accordance with the sanctioned plan by respondent No.1 Corporation. It was further provided that in the undertaking the petitioner shall abide by the final decision to be taken by the Government concerning the payment towards occupancy rights subject to the petitioners right to challenge the decision of the Government and in that event to abide by the decision of the Court.

6. Considering the above, the petition can be disposed of by issuing the following directions:-

(i) The Letter/Circular dated 31st October, 2001 to the extent that it directs the occupants of land taken from the Government to produce a N.O.C. from the Collector is without the authority of law.

(ii) However, considering the object behind issuing

the Letter/Circular of 21st October, 2001 we direct the respondent No.2 on an application being received in respect of the lands which are received from the Government under the provisions of the Land Revenue Code or other enactments to intimate the details of the same to Respondent No.1 within four weeks of receipt of such Application. On receipt of such application it will be open to respondent No.1 to take such steps in law which they are entitled to.

(iii) The order dated 15th March, 1999 issued under Section 154 of M.R.T.P. Act is illegal, null and void order.

(iv) The respondent No.1 before taking any steps shall issue notice to the occupants and/or a transferee from the occupant and after giving an opportunity, to pass appropriate orders which they are entitled to under the law in force and by following due procedure.

(v) Considering the controversy we need not decide the issue as to the type of the land and other issues raised and all these issues are left open for consideration by the appropriate Authority of the respondent No.1 who is vested with such power.

(vi) The amount of Rs.50,000/- which has been deposited to continue to remain deposited till such time as the Collector/Respondent No.1 takes action according to law. If after hearing the petitioners/occupants the Authority comes to the conclusion that the amount is not due and payable the same shall be refunded to the petitioner/ocupant.

(vii) The respondent No.1 in the cases of these petitions which have been disposed off by this Court, to commence the process within six weeks from today and complete the process not later than nine months from today.

(viii) In so far as the consequential orders passed by the respondent No.2 based on the Letter/Circular dated 31st October, 2001 the same would be of no effect and are consequently quashed and set aside. We, however, make it clear that it will still be open to respondent No.2 Planning Authority to exercise whatever powers it has under the provisions of the Maharashtra Regional Town Planning Act, 1966 and the D.C.Regulations and this order will not stand in their way.

(ix) In so far as the undertakings are concerned, the petitioners are released from the undertakings. However, it is made clear that the petitioners will be bound to make any good the amount as set out in the undertaking on the Government fixing a policy, if the petitioners are held to be liable, but subject to the rights of the petitioners to challenge the validity of the order passed on that policy.

(x) In the event the petitioners do not have the original of the title document on an application being made by the petitioners/ocupants to respondent No.1 the said document be made available so as to enable the petitioners/occupants to make good their case before the respondent No.1 or it any authority before whom the proceedings will commence.

. Rule made absolute accordingly. No order as to costs. Liberty to the parties to apply.

(**F.I. REBELLO, J.**)

(ANOOP V. MOHTA, J.)